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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1995

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THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, DELBERT L. JACKSON, and K. KAY SHEARIN,

Petitioners,

v.

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,

Respondents.

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# PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

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# PETITION FOR WRIT OF CERTIORARI
and
APPENDIX

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37 pp

## QUESTION PRESENTED FOR REVIEW

Did the courts of the State of Delaware deny the Petitioners due process of law when the trial court, on a motion for civil contempt for the discreet and completed act of filing a new and separate lawsuit after the first suit was closed, declined to find Petitioners in contempt but nevertheless imposed on the corporate Petitioner's chief executive officer personally a non-coercive and non-compensatory fine, and the appellate court affirmed?

## PARTIES TO PROCEEDING TO BE REVIEWED

All parties below appear in the caption, except that Respondents/Appellees/Plaintiffs Morris A. Comegys and Sara B. Gardner sued individually and as representatives of a class of 229 members of the Mother AUFCMP Church, a Delaware religious corporation.

Petitioners/Appellants The Conference of African Union First Colored Methodist Protestant Church and Bishop Delbert L. Jackson were Defendants, and Petitioner/Appellant Shearin was their attorney in the trial court proceedings.

There is no parent company or partly owned subsidiary to be listed. The Conference, a Delaware non-stock business corporation, is the administrative part of the African Union Methodist Protestant Church, a denomination incorporated under a 1787 Act of Delaware's legislature.

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## DECISIONS BELOW

The appellate court issued no opinion but did issue two orders setting forth its factual findings and conclusions: the 3 March 1995 order affirming the trial court's judgment [A04] and the 8 May 1995 order denying Appellants' motion for re-argument or rehearing en banc [A01].

## GROUNDS FOR JURISDICTION

The decision below was rendered by the Delaware Supreme Court on 3 March 1995. Petitioners' timely motion for rehearing was denied on 8 May 1995. This honorable Court has jurisdiction in this cause pursuant to 28 U.S.C. §1257(a) & §2101(c).

## PROVISIONS INVOLVED

### Constitution of United States of America

**First Amendment:**

> Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances.

**Fifth Amendment:**

> No person shall be . . . deprived of . . . property, without the due process of law . . .

**Fourteenth Amendment, Section 1:**

> . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of . . . property, without due process of law; nor deny to any person within its jurisdiction

the equal protection of the laws.

Del. Gen. Corp. Law: Delaware Code, Title 8

§325. Actions against officers, directors or stockholders to enforce liability of corporation; unsatisfied judgment against corporation.

(a) When the officers, directors or stockholders of any corporation shall be liable by the provisions of this chapter to pay the debts of the corporation, or any part thereof, any person to whom they are liable may have an action, at law or in equity, against any 1 or more of them, and the complaint shall state the claim against the corporation, and the ground on which the plaintiff expects to charge the defendants personally.

(b) No suit shall be brought against any officer, director or stockholder for any debt of a corporation of which he is an officer, director or stockholder, until judgment be obtained therefor against the

corporation and execution thereon returned unsatisfied.

## STATEMENT OF THE CASE

The Conference of AUFCMP Church is the corporation that administers the legal and business affairs of the AUMP Church, which is a hierarchical Christian denomination. From 1813 until April 1991 the Mother AUFC MP Church was a congregation in that denomination. Bishop Delbert L. Jackson was elected by the denomination's members and became the head of the Church and the Conference in 1988.

Each of the AUMP congregations is a religious corporation organized under its respective state law. The Conference has always exercised exclusive authority to ordain AUMP ministers and to appoint the pastors of all AUMP congregations. Since about 1958, each May when the Church ap-

pointed the pastors for the next twelve months, each congregation has signed a form contract that incorporates by specific reference a clause promising to convey its real property to the Conference if it secedes from the Conference. The Mother congregation signed its last such contract on 3 June 1990, for the year June 1990 through May 1991.

For almost a century the Church's practice had been to have each congregation hold legal title to the real property associated with it, but on 6 April 1991 the Church's legislative body passed a resolution requiring the pastor of each congregation, as its highest corporate officer, to sign a quitclaim conveying legal title for all property to the Conference.

The pastor of the Mother congregation did sign such a quitclaim to the Conference that day, and it was recorded on 8 Ap-

ril 1991 in the county deed office. On the evening of 9 April, the Mother congregation voted to secede from the Conference. On 18 April two of its members, Respondents Comegys and Gardner, filed suit against Bishop Jackson in Delaware's Court of Chancery [No. 12055-NC], asking that court to validate the congregation's withdrawal from the AUMP Church and void the April 1991 quitclaim, thus conveying legal title for the real estate to the newly-independent congregation.

That court joined the Mother congregation as a plaintiff and the Conference as a defendant. In February 1993 the court entered final judgment [A15] declaring the congregation independent and voiding the 6 April quitclaim. The trial court opined,

> This Court has the power to award legal fees incurred by a party by reason of bad faith acts by the opposing party in the course of litigation. . . . I cannot conclude, based on the evidence presented, that those tac-

> tics [of defendants] amounted to "bad faith" as would justify shifting the plaintiffs' legal fees to the defendants.[] The defendants' tactics were, it appears, employed to further their (incorrect) perception that they had a legitimate interest in the properties at issue. [22 April 1992 opinion at 22]

The court nevertheless ordered the Conference, but not the Bishop, to pay plaintiffs $3416.88 for court costs and $6845.00 for counsel fees. [¶3 (a)&(b) at A19] Delaware's Supreme Court affirmed that judgment on appeal, and this Court denied defendants' petition for a writ of certiorari in December 1993 [No. 93-746].

In May 1994 the Conference filed suit [No. 1674-S] against the Mother congregation in Delaware's Chancery Court for specific performance of the June-1990-to-May-1991 pastoral contract promising to convey the real property to the Conference if the Mother congregation seceded, which the trial court had found it did on 9 April

1991. Neither the Bishop nor Shearin was a party to No. 1674-S; although Shearin had represented the Conference and the Bishop in the prior proceedings, another attorney represented the Conference in No. 1674-S [A08]. Respondents then reopened No. 12055-NC by filing a motion for the court to hold Petitioners and that new attorney in contempt for violating an injunction in the judgment order in No. 12055-NC by filing No. 1674-S [A12; A08-A09].

At the hearing on the motion, it was not until after Petitioners rested their defense that Respondents asked the court to hold the Bishop personally liable. The court announced from the bench that it would do so, and defendants submitted a letter memorandum dated 23 June 1992 arguing, among other issues, that in the proceedings on the motion the Petitioners had been denied their "rights to due process

under the 5th and 14th Amendment to the U.S. Constitution and Article I, §9 of the Constitution of the State of Delaware" [Ch.Ct.D.I.#179 at p. 2, ¶6].

The trial court denied the motion for contempt [¶1 at A13] but nevertheless ordered Bishop Jackson personally to pay the $10,261 of costs and fees [¶3 at A13-A14] awarded against the Conference in February 1993. The trial court never addressed defendants' due process arguments.

Petitioners appealed that 6 July 1994 judgment to Delaware's Supreme Court. On appeal Petitioners again raised the due process issues, under argument headings using the words "due process" [7 Oct. 1994 opening brief at 13-20; 16 Dec. 1994 reply brief at 6-9].

By then the Conference was deeply in debt to the entity that had provided its operating capital since 1991, without any

assets except the now-worthless quitclaims, and months in arrears in paying the Bishop's salary [¶1 at A01-A02]. Knowing the Conference was insolvent, Respondents had never even tried to execute on the February 1993 judgment against it in No. 12055-NC, but while this appeal was pending they filed a lien on the Bishop's home and caused the county sheriff to attach his automobile, so he could not remove it from his premises, which interfered with his ability to perform his ecclesiastical duties. The Bishop borrowed $11,000 and paid it to the appellate court to obtain a stay of execution pending appeal [A03].

In March 1995 the appellate court issued its order rejecting Petitioners' due process arguments [¶5 at A09] and affirming the 6 July 1994 judgment [A11]. On 8 May 1995 the appellate court denied Petitioners' timely motion for rehearing. Peti-

tioners now ask this Court to review those rulings by the Supreme Court of Delaware.

## REASONS FOR ALLOWING THE WRIT

Assuming, arguendo, that:

(1) the Chancery Court's permanent injunction [¶(a), ¶(d), & ¶(e) at A16-A18] could be read to prohibit the Conference's filing No. 1674-S; and

(2) the Chancery Court could enjoin the Conference from filing suit on its contract claim without violating the Conference's constitutional rights; and

(3) by exercising his business judgment, as the Conference's sole director, to authorize the Conference to file No. 1674-S, the Bishop actually violated the February 1993 injunction; then,

it still would have violated due process for the Chancery Court (which has no criminal jurisdiction whatsoever) to hold

the Bishop in contempt and fine him $11,000 for the completed discrete act of filing the contract suit, because that fine was neither coercive (as there was no way to purge it) nor compensatory (as it remedied no loss to Respondents from the new filing). [International Union, UMW v. Bagwell, 129 L.Ed.2d 642, 653 (1994)]

If it would have been unconstitutional to hold the Bishop in civil contempt and fine him $11,000 for it, it must have been unconstitutional not to hold him in contempt but to fine him the $11,000 anyway.

The trial court also denied the Conference the process due it, as a Delaware corporation, under Delaware's own statutes: The court granted Respondents' request to impose personal liability on the Conference's corporate officer--in violation of the Conference's corporate charter and for the Conference's alleged violation of the

injunction--without first requiring Respondents to make the showings required by 8 Del.C. §325 [supra at 6], which were that they had executed unsuccessfully on their judgment against the Conference [§325(b)] and that some provision of Delaware's General Corporation Law made the Bishop personally liable for that debt [§325(a)], although the court itself had ruled in the February 1993 judgment that the Bishop was not personally liable for it.

The trial court also denied Shearin due process, inter alia, by infringing her free-speech and assembly rights to confer with and advise her client about legal matters related to the filing of No. 1674-S, as well as her rights with respect to the accusation that filing No. 1674-S was a criminal contempt in which she conspired. Abridging her rights to provide legal counseling to the Conference and

Bishop impeded their access to counsel and thus infringed their right to petition the courts for redress of their grievances.

Respectfully submitted,

K. Kay Shearin

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IN THE SUPREME COURT OF THE
STATE OF DELAWARE

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, DELBERT JACKSON, and K. KAY SHEARIN,
Defendants Below-Appellants,

v.

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,
Plaintiffs Below-Appellees.

No. 297, 1994
Entered: 8 May 1995

O R D E R

This 8th day of May, 1995, it appears to the Court that:

1) On March 20, 1995, appellants jointly filed a motion for reargument or rehearing en banc of the final order issued by this Court on March 3, 1995, which affirmed the decision of the Court of Chancery in this matter. Before this Court had an opportunity to resolve the pending motion, however, one of the appellants, The Conference of the AUFCMP Church

("The Conference"), filed a petition in bankruptcy on March 21, 1995 with the United States Bankruptcy Court for the District of Delaware. The Conference's bankruptcy petition effectively stayed this Court from taking any further action with respect to the appeal pendiing before it. See 11 U.S.C. §362(a).

2) On April 28, 1995, the Bankruptcy Court dismissed the Conference's bankruptcy petition, thereby lifting the automatic stay of this appeal. Consequently, this Court is free to determine the appellants' motion and has determined that reargument or rehearing en banc in this case is not warranted. Consequently, appellants' motion is denied.

NOW, THEREFORE, IT IS ORDERED that the appellants' motion for reargument or rehearing en banc is DENIED. The Register in Chancery is directed to release the

$11,000 cash deposit, which was posted by appellants as supersedeas in this matter, plus accrued interest, directly to appellee or its designated agent.

BY THE COURT:

/s/ Joseph Walsh

Justice

IN THE SUPREME COURT OF THE
STATE OF DELAWARE

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, DELBERT JACKSON, and K. KAY SHEARIN,
Defendants Below-Appellants,

v.

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,
Plaintiffs Below-Appellees.

No. 297, 1994
Entered: 3 March 1995

O R D E R

This 3rd day of March, 1995, the Court having considered briefs filed by the parties and the record below, it appears that:

1) This appeal is just one small element of protracted litigation involving a church and its property in Wilmington. The Conference of African Union First Colored Methodist Protestant Church, K. Kay Shearin, Esquire and Bishop Delbert L. Jackson, all appeal an order of the Court

of Chancery which enforced the payment of costs and atorneys fees awarded pursuant to a Superseding Final Order and Judgment of the Court of Chancery dated February 24, 1993.

2) The Mother African Union First Colored Methodist Protestant Church ("The Mother Church") is a church and a Delaware corporation. The Conference of African Union First Colored Methodist Protestant Church ("The Conference) is also a Delaware corporation which represents an affiliation of churches similar to the Mother Church. The Mother Church decided to disaffiliate with the Conference in April of 1991. On the belief that the Mother Church's real property belonged to the Conference, Bishop Delbert Jackson executed deeds to the property purporting to transfer title to the Conference. He also caused the other Church's buildings to

be padlocked, refused to grant access to its members, and appointed a new pastor. On the application of the trustees of the Mother Church, the Court of Chancery issued in New Castle County a temporary restraining order and a preliminary injunction against the Conference. Following a trial on the merits, the Court of Chancery found the Mother Church to be the lawful owner of the properties and the Vice Chancellor awarded the Mother Church permanent injuctive relief.

3) Throughout this underlying litigation, the attorney for the Conference has been Appellant K. Kay Shearin. Several times prior to the issuance of the permanent in- juction, Ms. Shearin was contacted by the Mother Church's attorney for the purpose of scheduling funerals for the members in accordance with the preliminary injunction order. Ms. Shearin told oppos-

ing counsel on numerous occasions that she did not represent the new pastor and that he should contact the new pastor directly. At the trial,however, Ms. Shearin asserted that she did represent the new pastor. Opposing counsel attempted again to schedule a funeral through Ms. Shearin but she refused this request. Ms. Shearin then wrote a letter to the Vice Chancellor seeking to "withdraw her appearance" contending that for her to represent the new pastor would create a conflict of interest. On May 20, 1992, the Vice Chancellor sanctioned Ms. Shearin after finding that her letter and her inconsistent positions were a violation of Chancery Court Rule 11. This judgment was affirmed by this Court on appeal. The Conference v. Mother African Union, Del. Supr., No. 96, 1993, Moore, J. (October 14, 1993), cert. denied 114 U.S. 637 (1993). The actual dollar val-

ue of this sanction was set in the Superseding Final Order and Judgment of February 24, 1993. This order also awarded costs and attorney's fees against the Conference.

4) The Vice Chancellor's Superseding Final Order and Judgment set $459.00 as the sanction to be paid by Ms. Shearin and awarded $3,416.88 in costs and $6,845.00 in counsel fees to be paid by the Conference to the Mother Church. No payment was made. Instead, the Conference executed more quitclaim deeds in 1993 to some of the Mother Church's property and also brought an action in the Court of Chancery in Sussex County through another attorney who alleged the Mother Church was contractually bound to convey title to all of its real property to the Conference. Appellees filed a motion to show cause for civil contempt in the original New Castle

County proceeding. Bishop Jackson was also named as a respondent to the rule to show cause. After a hearing, the Court of Chancery denied without prejudice the motion to hold Appellants in contempt for the filing of the Sussex County action. However, the Vice Chancellor ordered all costs and fees previously awarded to be paid within two weeks. After finding that Bishop Jackson determines and directs what the Conference does, the Vice Chancellor placed an individual responsibility upon him for the payment of the Conference's obligation in the event the Conference did not pay by the due date. It is from this ruling entitled "Order Enforcing Superseding Final Order and Judgment" that the present appeal is taken.

5) Appellants contend on appeal that the Court of Chancery erred when it imposed awards against the Conference and

Ms. Shearin in its orders of May 20, 1992 and February 24, 1994. Appellants also contend that Bishop Jackson was denied due process, that Bishop Jackson cannot be held personally liable for any award, and that the sanctions impermissibly punish Appellants for exercising their rights of free speech and religion under the First Amendment to the U.S. Constitution.

6) We find that none of these contentions have merit. The doctrine of res judicata bars Appellants from relitigating in this appeal the award against Ms. Shearin. Additionally, Appellants are time barred from appealing the February 22, 1993 order specifying the amounts to be paid by Ms. Shearin and the Conference. See SUPREME COURT RULE 6(a)(i). These bars bars extend to all issues which might have been raised and decided in the previous ligitation or appeal. The only issues

now raised which are not procedurally barred pertain to the award against Bishop Jackson. By the terms of the order, Bishop Jackson's obligation is contingent upon the failure of the Conference to comply. Given Bishop Jackson's full control of the conference, we are satisfied that it was well within the discretion of the Vice Chancellor to compel Bishop Jackson to cause the Conference to satisfy its financial obligation by imposing a monetary penalty for his failure to do so. We find no error of law and no abuse of discretion on the facts before us.

**NOW, THEREFORE, IT IS ORDERED** that the judgment of the Court of Chancery is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely

President Judge, Superior Court

IN THE COURT OF CHANCERY OF THE STATE
OF DELAWARE IN AND FOR NEW CASTLE COUNTY

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS and SARA B. GARDNER,
Plaintiffs,

v.

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, and DELBERT L. JACKSON,
Defendants.

C.A.No. 12055
Entered: 6 July 1994

ORDER ENFORCING SUPERSEDING FINAL ORDER AND JUDGMENT

The Court having entered its Superseding Final Order and judgment on February 24, 1993, (the "Final Order") which Order was affirmed by the Supreme Court of Delaware; and the defendants having failed to comply with certain provisions of the Final Order; and upon motion of the plaintiffs the Court having directed the defendants to show cause why they should not be held in contempt of Court; and a hearing on that motion having been held June 20, 1994;

THEREFORE, IT IS HEREBY ORDERED this 6th

day of July, 1994, for the reasons set forth at the June 20, 1994, hearing, as follows:

1. The plaintiffs' motion to adjudicate the defendants in contempt of the Final Order by reason of the filing of Civil Action No. 1684 in the Court of Chancery in and for Sussex County, is denied without prejudice to the plaintiffs' right to renew their motion for good cause.

2. The costs of $3,416 and attorneys fees of $6,845, plus interest accrued thereon from February 24, 1993, previously awarded in the Final Order to the class and a gainst the defendant Conference of African Union First Colored Methodist Protestant Church ("the Conference"), shall be paid by the Conference by no later than the close of business on July 15, 1994.

3. The aforesaid costs and attorneys fees, and accrued interest are hereby also awarded against the defendant Delbert L.

Jackson, sole director of the Conference and the person who controls it. Defendant Jackson shall become jointly and generally liable for any unpaid costs, fees and interest if such amounts are not paid by the Conference on or before the close of business on July 20, 1994.

4. K. Kay Shearin, Esquire, shall pay to the plaintiffs' counsel the $459 in attorneys' fees awarded in Paragraph 2 of the Final Order, plus interest accrued thereon from February 24, 1993, on or before the close of business on July 20, 1994.

5. Paragraphs 2, 3, and 4 of this Order shall have the same force and effect as a judgment at law, and shall be enforceable by execution at law or other equivalent process in the event that the amounts set forth in those Paragraphs, or any portion thereof, are not paid by July 20, 1994.

/s/ Jack B. Jacobs, Vice Chancellor

IN THE COURT OF CHANCERY OF THE STATE
OF DELAWARE IN AND FOR NEW CASTLE COUNTY

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, et al., Plaintiffs,

v.

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, et al., Defendants.

C.A.No. 12055

Entered: 24 February 1993

SUPERSEDING FINAL ORDER AND JUDGMENT

The Court having entered its Amended Final Order and Judgment on May 20, 1992, and the Supreme Court having determined that that Order was interlocutory, and it appearing that only two matters await judicial action, and that it is appropriate that such judicial action is now timely and that an Order that determines finally all issues in this case;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, DECREED AND DECLARED this 24th day of February, 1993, as follows:

1. For the reasons set forth in this

Court's opinion dated April 22, 1992:

(a) The defendants, and their agents, employees, servants, officers, attorneys, successors, assigns, and all others acting in concert or participation with them, including, but not limited to, Rev. Thomas E. Moon and Rev. Jonah I. Lindsay, are hereby enjoined and restrained from interfering with the quiet title, operation, use, enjoyment and governance of the properties of the Mother African Union First Colored Methodist Protestant Church (the "Mother Church") located at West Ninth and Franklin Streets, Wilmington, Delaware, 125 West 38th Street, Wilmington, Delaware, and Mount Olive cemetery found on Lancaster Avenue in New Castle County, Delaware. Said quiet operation, use, enjoyment and governance resides solely in the Mother Church, its duly elected trustees, its members, and their successors.

(b) The nine duly elected incumbent trustees of The Mother Church are declared to be Morris A. Comegys, Sara B. Gardner, Mary K. Walker, Jane J. Gibbs, John J. Jackson, Lydia C. Watson, Anna B. Cassidy, Lydia Clayton, and Patricia Wallace.

(c) The members of the Mother Church as of April 9, 1991, are the 229 persons listed in Plaintiffs' Trial Exhibit 20.

(d) The defendants and all others identified in paragraph (a) above are enjoined and restrained from recording in the future any further deeds, encumbrances, or other documents relating to the title to the properties identified in paragraph (a) hereof.

(e) The defendants, and all others identified in paragraph (a) above, are hereby enjoined and restrained from (i) holding themselves out as having any ownership interest or control in the above

identified properties and any other property the Mother Church, and (ii) interfering with worship services, funerals or any other religious practices conducted by that corporat

(f) The Indenture, dated April 6, 1991, between the Mother Church and the Conference of African Union First Colored Methodist Protestant Church recorded with the Office for the Recording of Deeds in and for New Castle County, Delaware, in Book No. 1160, page 179, is hereby declared null and void ab initio. Plaintiffs shall record this Order with said office and cause this Order to be so indexed so that the records of the Recorder of Deeds will reflect the invalidity of that Indenture.

(g) The counterclaim filed by the defendants is dismissed with prejudice.

2. For the reasons set forth in this Court's Opinion and Order dated May 20, 1992, adjudicating K. Kay Shearin, Esquire

in violation of Court of Chancery Rule 11:

(a) The relief ordered at page 10 of that Opinion is hereby incorporated into this Order by reference; and

(b) Ms. Shearin shall pay $459 in attorneys' fees to plaintiffs' counsel in consequence of the said Rule 11 violation.

3. The plaintiffs having applied in timely fashion for an award of attorneys' fees and costs, and based upon the plaintiffs' moving papers and the letters of counsel to the Court dated February 16, 1993 and February 23, 1993:

(a) The plaintiff class is awarded the sum of $6845 as counsel fees, and the sum of $3416.88 as costs.

(b) The aforesaid attorneys' fees and costs shall be paid by the defendant, the Conference of African Union First Colored Methodist Protestant Church.

/s/ Jack B. Jacobs, Vice Chancellor